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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re A.S., a Person Coming Under the
Juvenile Court Law.

B211170
(Los Angeles County
Super. Ct. No. KJ31815)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Daniel S. Lopez, Judge. Affirmed.

Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

A.S. appeals from the juvenile court order declaring him a ward of the court, after finding that he committed attempted kidnapping and robbery. A.S. argues that the evidence was insufficient on two counts. We affirm the order.

BACKGROUND

On May 27, 2008, the Los Angeles County District Attorney filed a six-count petition pursuant to Welfare and Institutions Code section 602, alleging that A.S., a minor, had committed attempted kidnapping of a victim under the age of 14, in violation of Penal Code sections 664 and 207, subdivision (a) (count 1), that A.S. had committed two robberies in violation of Penal Code section 211 (counts 3 and 5), and that A.S. was personally armed with a firearm within the meaning of Penal Code section 12022.53 on all three counts. The petition also alleged that A.S. possessed a firearm as a minor in violation of Penal Code section 12101, subdivision (a)(1) in connection with the attempted kidnapping and both robberies (counts 2, 4, and 6). A.S. denied the allegations.

After an adjudication, the juvenile court found not true the firearm counts (counts 2, 4, and 6), the firearm enhancements, and the special allegation that the kidnap victim was under 14 years old. (The court found there was reasonable doubt whether a gun was involved in the kidnapping and whether the firearm possessed by A.S. during the other incidents was real, and also found that Leslie O. was 14 at the time of the incident.) The court found true the substantive counts of attempted kidnapping (count 1) and robbery (counts 3 and 5). The court declared A.S. a ward of the court, and placed him in a camp community for a period of six months, with a maximum confinement time of six years and 10 months (less 40 days predisposition credit).

The evidence at the adjudication was as follows:

Attempted kidnapping of Leslie O. (count 1).

Leslie O. was walking home from school alone at around 3:00 p.m. on April 18, 2008. She noticed that a dark-colored car was slowly following her down the street. The car pulled up to Leslie O.'s right side, and she saw three people inside. One of the people was in the back seat behind the driver, and yelled at her four times to get in the car,

showing her a gun. Leslie O. pretended to be going into one of the nearby residences, and the car drove on by. She then continued to walk to the apartment complex where she lived. As she entered the apartments, she saw the car turning, and someone said either “Watch your back” or “You better take care of yourself.” Leslie O. testified that the person in the back seat held the gun flat, barely out of the window. She testified that she had never seen any of the three people in the car before, that she did not see the person with the gun in the courtroom, and that the person with the gun was in his 30’s.

Leslie O. was crying and scared, and when she got home she told her aunt and her mother, who called the police. The police came right away, and Leslie O. told them what had happened.

Two-and-a-half weeks after the incident, on May 6, 2008, a detective met with Leslie O. at her school, and showed her a six-pack photographic lineup. Leslie O. identified a photograph of A.S., circled it, initialed it, and wrote a statement confirming that the person in the photograph “was with the gun behind the driver.”

The detective testified that Leslie O. had been calm and composed, but when she saw the lineup she stopped at the photograph of A.S. The detective testified: “her eyes began to well up as if she was getting ready to cry, and she said that that was the guy who had the gun behind the driver.” Leslie O. then wrote a statement of her identification. The detective showed her another six-pack, and Leslie looked at each photograph for a few seconds and said that none of them looked familiar.

A.S. was arrested on May 22, 2008, for the attempted kidnapping. He told his mother that Leslie O. had identified him, that he knew her, and that she lived in the same apartment complex. A.S.’s mother then went to Leslie O.’s home on May 26, taking a photograph of A.S. with her. She identified herself to Leslie O. and asked her if she knew A.S. Leslie O. said he looked familiar. A.S.’s mother asked Leslie O. if A.S. was involved in the attempted kidnapping, and Leslie O. said no. A.S.’s mother started to cry and asked Leslie O. to come to court to testify, telling Leslie O. she was very upset that A.S. was incarcerated.

About a month later, on June 24, 2008, a police investigator spoke with Leslie O. on the telephone. Leslie O. told the investigator that police had come to her school and showed her six pictures and that she had recognized A.S. as a friend of her brother's, but he was not the person involved in the kidnapping. Leslie O. said she was going to tell the attorney that in court.

At the adjudication, Leslie O. testified that she made a mistake when she identified A.S. in the photographic lineup, that the true suspects were around 30 years old, and that she first realized she was making a mistake when she spoke to the police investigator. Leslie O. also stated that she was still afraid that the people who had attempted to kidnap her might try to do it again. She testified that she had been present a month earlier when Christopher G.'s bike was taken, and had seen A.S. there with a gun. She was afraid of A.S. because he knew where she lived.

Defense witness Jessica Ruiz, the program director at Boys Republic Monrovia Day Treatment, where A.S. attended school, testified that attendance records for April 18, 2008, showed that A.S. was in school on April 18 from 8:00 a.m. to 4:00 p.m. Students sign in when they arrive at 8:00 a.m. A teacher checks during each period and notes students' attendance until 2:00 p.m., when the last period ends. From 2:00 p.m. to 2:45 p.m. the students do community service around the school, and then the students have group discussion with Ruiz. At 4:00 p.m. a van drives them home, and if a student were missing the driver would immediately call the parents. She believed it was "not possible" for A.S. to have left the school before then without the staff's knowledge. Ruiz testified that A.S. was in school on April 18, and stated "I do believe he was there" and "he was there" during her group session from 2:30 to 4:00 p.m. on March 20, April 18, and April 30.

Robbery of Christopher G. (count 3).

A month before Leslie O.'s attempted kidnapping, March 20, 2008, Christopher G., 13 years old, went to a track meet after school and headed home with his bike around 4:45 p.m.; Leslie O. and another young girl accompanied them. He had seen a 15 to 16-year-old Latino male wearing sunglasses at the track meet, who had told him that one of

the girls he was with was cute. Christopher G. noticed that the Latino male was following them.

When they arrived at Leslie O.'s apartment complex, A.S. greeted the Latino male with a high five, and then approached Christopher G. and asked him if he knew anyone who sold drugs. Christopher G. said no, and A.S. then asked Christopher G.: "Hey, come to the bushes where I'm going to talk to you." Christopher G. was scared and said no, thinking that A.S. wanted to separate him from the group to "do something to me."

The Latino male then pushed Christopher G. off his bicycle, punched him when he was on the ground, and picked the bike up and rode it around. A.S. was walking toward a group of people who were present, and he pulled out a gun, pointed it at the ground, and cocked it back. Oswal Q., another teenager at the scene, told the Latino man to give the bike back, and shortly thereafter the male gave Christopher G. back his bike.

Oswal Q. testified that A.S. was talking to the Latino male, who then pushed Christopher G. off his bike. A.S. then walked over to Oswal Q., showed him a chrome handgun, and cocked it back.

Leslie O. testified that she was present, that she saw A.S. take Christopher G.'s bike, and that she also saw him holding a gun.¹

DISCUSSION

A.S. argues that there was insufficient evidence that he was in the car during Leslie O.'s attempted kidnapping, and that there was insufficient evidence that he aided and abetted the robbery of Christopher G. We disagree.

We apply the same standard of proof in juvenile proceedings involving criminal acts as in adult criminal trials, and in considering the sufficiency of the evidence in a

¹ On count 5, the robbery of Joey Mendez, Mendez (who was 19 years old) testified that on April 30, 2008, A.S. demanded Mendez's cell phone, pulled a gun, and pointing it at Mendez's face, threatened to kill him. Mendez complied. Mendez then knocked the cell phone out of A.S.'s hand. A.S. swung at him, and A.S. and several friends hit and kicked Mendez. When Mendez tried again to regain the phone, which was on the ground, A.S. ran and grabbed the phone, leaving with his friends. A.S. does not appeal from the true finding on count 5.

juvenile proceeding, we “review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. We must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence [citation] and we must make all reasonable inferences that support the finding of the juvenile court. [Citation.]” (*In re Jose R.* (1982) 137 Cal.App.3d 269, 275; *People v. Medina* (2009) 46 Cal.4th 913, 919.) We will reverse only if ““upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].”” (*People v. Hughes* (2002) 27 Cal.4th 287, 370; *In re Arcenio V.* (2006) 141 Cal.App.4th 613, 616.) “[A]ll conflicting evidence will be resolved in favor of the decision.” (*People v. Kurey* (2001) 88 Cal.App.4th 840, 849.)

Attempted kidnapping of Leslie O.

A.S. first argues that it was “physically impossible” for him to have attempted to kidnap Leslie O. at 3:00 p.m. on April 18, 2008, because school attendance records at Boys Republic show that he was there until 4:00 p.m. on that date. The school records, however, only document his presence until 2:00 p.m., although director Ruiz testified that she believed A.S. was in school after 2:00 p.m., when she held group session until 4:00 p.m. The court clearly did not credit the alibi provided by Ruiz’s testimony. Viewing the evidence in the light most favorable to the prosecution, A.S. could have left school after the last attendance check and been present in the car that followed Leslie O.

A.S. also argues that Leslie O.’s identification of A.S. was not substantial evidence. When a detective showed Leslie O. a photographic lineup containing A.S.’s photograph two weeks after the attempted kidnapping, Leslie became emotional and identified A.S. as the individual in the rear seat of the car who held a gun out of the window and shouted at her to get into the car. A.S., however, questions why Leslie, who testified that she knew A.S., did not immediately tell the police that A.S. was in the car when her aunt and mother reported the kidnapping later that afternoon. This is unavailing. Leslie O. told the police that she had not seen the suspects before but that she could identify them if she saw them again. Her later identification of A.S. from a

photographic lineup was enough to support the juvenile court's finding that A.S. was in the vehicle.

A.S. does not argue that Leslie O.'s recantation at the adjudication of her identification of A.S. shows that the photographic identification was unreliable: Leslie O. testified that after Leslie O.'s identification of A.S., his mother visited A.S., crying and upset, and asked Leslie O. to testify in A.S.'s favor. Leslie O. subsequently told a police investigator that she was going to testify that A.S. was a friend of her brother's but not the kidnapper. Further, Leslie O. testified that a month before the attempted kidnapping she saw A.S. holding a gun at the scene of the robbery of Christopher G., and that she was afraid of A.S. because he knew where she lived. Her recantation at trial is plausibly explained by Leslie O.'s fear of A.S., given his participation in the earlier robbery and his mother's attempt to influence her testimony. The juvenile court stated "the court ascribes [the change in identification] to fear and intimidation", and substantial evidence supports that conclusion.

Robbery of Christopher G.

The juvenile court concluded that A.S. aided and abetted the Latino male in robbing Christopher G. A.S. first argues that he could not be found guilty on an aiding and abetting theory because no robbery took place. He contends that because the Latino male gave the bicycle back to Christopher G., there was no evidence of the required intent permanently to deprive Christopher of the bicycle.

Penal Code section 211 criminalizes "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." Robbery requires "the specific intent permanently to deprive such person of such property.'" (*People v. Burney* (2009) 47 Cal.4th 203, 253.) In *Burney*, the defendant contended there was insufficient evidence of robbery where he took the victim's car keys and automobile at gunpoint, because at the time he only intended to use the vehicle temporarily. (*Ibid.*) The Supreme Court rejected this argument. Although the defendant argued that the evidence showed that at the time he took the keys and the car, he intended to park the vehicle somewhere and leave the

victim unharmed in the trunk, “a reasonable jury, considering this same evidence, could reject defendant’s explanation as unreasonable.” (*Id.* at 254).

Similarly, a reasonable fact finder in this case could conclude that the Latino male intended to permanently deprive Christopher G. of his bicycle. He pushed Christopher G. off and rode the bicycle around, returning it only after Oswal Q. told him to give it back to Christopher G. “Even the return of property previously taken does not compel the conclusion that a defendant intended only to temporarily deprive the owner of the property.” (*In re Albert A.* (1996) 47 Cal.App.4th 1004, 1008.)

A.S. also argues that he could not be found to have aided and abetted, because he did nothing to participate in the robbery. “Among the factors which may be considered in determining aiding and abetting are: presence at the crime scene, companionship, and conduct before and after the offense.” (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5.)

Christopher G. testified that A.S. was present at the scene, greeted and spoke to the Latino male, and tried to draw Christopher G. away from the group into the bushes. There was testimony from three witnesses—Christopher G., Oswal Q., and Leslie O.—that A.S. showed a gun (Christopher G. and Oswal testified that he cocked it) during the taking of the bicycle. The court found that a reasonable doubt existed whether A.S. had used a real firearm. Nevertheless, A.S.’s presence at the scene, his communication with the Latino male who took the bike, the testimony that he asked Christopher G. to go into the bushes, and the three witnesses’ statements that he made a display of force during the robbery constitute sufficient evidence to support a finding that A.S. aided and abetted in the robbery of the bicycle.

Sufficient evidence supported the juvenile court’s true findings on counts 1 and 3.

DISPOSITION

The juvenile court's order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.